

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

CLAYTON MABRY,

Plaintiff,

v.

Case No. _____
Norfolk City Circuit Court Case No. CL21-3368-00

LOWE'S HOME CENTERS

and

CAL CARTAGE WAREHOUSING & TRANSLOADING, LLC

JOINT NOTICE OF REMOVAL

Defendants Lowe's Home Centers ("Lowe's") and Cal Cartage Warehousing & Transloading, LLC ("Cal Cartage"), (collectively "Defendants"), by counsel, and pursuant to 28 U.S.C. §§ 1441 and 1446, file this Joint Notice of Removal on the following grounds:

1. Plaintiff Clayton Mabry filed a Complaint in the Circuit Court for the City of Norfolk, Virginia on March 22, 2021, alleging a personal injury claim against Defendants for injuries from an alleged accident on July 14, 2020 in Suffolk, Virginia.

2. Plaintiff served both Defendants through their registered agents with a copy of a Summons, Complaint, Interrogatories, and Requests for Production on or about April 1, 2021. The Summons to Defendant Lowe's, as well as the Complaint, Interrogatories, and Requests for Production are collectively attached as Exhibit A. The Summons to Defendant Cal Cartage, as well as the Complaint, Interrogatories, and Requests for Production are collectively attached as Exhibit B.

3. The Defendants filed a joint Answer in Norfolk Circuit Court which is attached as Exhibit C. The Defendant also filed an Objection to Venue and Motion to Transfer Venue which is attached as Exhibit D.

GROUND FOR REMOVAL

4. Plaintiff is a Virginia resident and is therefore a citizen of Virginia.

5. Lowe's Home Centers is an LLC (Lowe's Home Centers, LLC) which is a North Carolina Limited Liability Company with its principal place of business in North Carolina. The sole member of Lowe's Home Centers, LLC is Lowe's Companies, Inc., which is a North Carolina corporation with its principal place of business in North Carolina.

6. Defendant Cal Cartage is a Limited Liability Corporation with its sole member being California Cartage Distribution LLC which is a limited liability corporation with its principal place of business in California.

- a. The sole member of California Cartage Distribution LLC is NFI California Cartage Holding Company, LLC which is a limited liability corporation with its principal place of business in New Jersey.
- b. The sole member of NFI California Cartage Holding Company LLC is NFI, LP. The limited partners of NFI, LP are the Sidney R. Brown 2009 GST Exempt Family Trust Dated November 30, 2009 (a New Jersey trust) ("Sidney Brown Trust"); the Jeffery S. Brown 2015 GST Exempt Trust (a New Jersey trust) ("Jeffery Brown Trust"); and the Irwin J. Brown 2015 GST Exempt Family Trust (a Texas trust) ("Irwin Brown Trust").

- c. Sandra Brown and Scott Brucker are the trustees of the Sidney Brown Trust and are both citizens of Pennsylvania.
- d. Daniel Cooper and Tracy Brown are the trustees of the Jeffery Brown Trust. Daniel Cooper is a citizen of Pennsylvania and Tracy Brown is a citizen of New Jersey.
- e. Scott Brucker is the trustee of the Irwin J. Brown Trust and is a citizen of Pennsylvania.

7. This action therefore involves a controversy wholly between citizens of different states. There is complete diversity of citizenship.

8. Plaintiff's Complaint seeks \$150,000 in damages against Defendants, and it otherwise alleges that Plaintiff "suffered, and will continue to suffer, permanent human damages..." Complaint at ¶ 15.

9. The amount in controversy therefore exceeds \$75,000, exclusive of interest and costs.

10. This Court therefore has original jurisdiction in this matter pursuant to 28 U.S.C. § 1332(a), and it may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

11. Pursuant to 28 U.S.C. § 1446 (b), this Notice of Removal is being filed within thirty (30) days after Defendants were served with the Complaint, the initial pleading setting forth the claims upon which Plaintiff's action is based or within thirty (30) days of Defendants receiving the Complaint.

12. Pursuant to 28 U.S.C. § 1441(a), venue of this removal action is proper in the Eastern District of Virginia, Norfolk Division, because it is in the district and division embracing the place where the state court action is pending.

13. Promptly after the filing of this Joint Notice of Removal, Defendants will give written notice of the removal to Plaintiff, the adverse party, and will file a copy of this Joint Notice of Removal with the Circuit Court for the City of Norfolk, as required by 28 U.S.C. § 1446(d).

14. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Lowe's and Cal Cartage in the state court action have been attached hereto.

15. Lowe's and Cal Cartage, the two Defendants in this action, both consent to removal.

16. Defendants demand a trial by jury, and a Notice of Demand of Trial by Jury is attached hereto as Exhibit E.

WHEREFORE, Lowe's Home Centers and Cal Cartage Warehousing and Transloading, LLC, by counsel, respectfully request that this action be removed from the Circuit Court for Fauquier to this Court.

LOWE'S HOME CENTERS &
CAL CARTAGE WAREHOUSING
& TRANSLOADING, LLC

By: /s/
Counsel

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Counsel to Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2021, I will email this filing to the following:

George T. Albiston, Esq. (VSB No. 22967)
Christopher M. Albiston, Esq. (VSB No. 94637)
Gilbert & Albiston
580 E. Main Street, Ste. 330
Norfolk, VA 23510
george@albistonlaw.com
Counsel for Plaintiff

And I hereby certify that on the 30th day of April, 2021, I will cause a true copy of the foregoing to be sent via U.S. mail to:

Hon. George E. Schaefer, Clerk
Norfolk Circuit Court
150 St. Paul's Boulevard
7th Floor
Norfolk, VA 23510-2773

/s/ _____
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